WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2006

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Civil Revision Petition (NPD) No. 75 of 2006

Gurunathan ... Petitioner/tenant

-Vs-

T.Krishnappa ... Respondent/landlord

PRAYER: Civil Revision Petition is filed under Section 25 of the Tamilnadu Buildings (Lease and Rent Control) Act 1960 as amended of Act 1/1980 against the order and decretal order dated 13.11.2005 in R.C.A.No.1/2003 on the file of the learned Rent Control Appellate Authority (Principal Subordinate Judge) Tiruvannamalai, confirming the order and decretal order dated 10.1.2003 in H.R.C.O.P. No.23/1999 on the file of the Rent Controller (Principal District Munsif), Tiruvannamalai.

For Petitioner : Mr. A.R.L.Sundaresan S.C. for A.L.Gandhimathi

For Respondent : Mr.R.Karthikeyan

* * * * *

O R D E R

The order passed in R.C.A.No.1/2003 on the file of the Principal Sub-Court, Tiruvannamalai, dated 13.10.2005 is challenged before this Court by the landlord. The landlord filed H.R.C.O.P.No.23/1999 under Section 14 (1) (b) of the Tamil Nadu Buildings Lease and Rent Control Act, for eviction. The learned Rent Controller, Principal District Munsif, Tiruvannamalai, after going through the rival contentions of the parties, after considering the oral and documentary evidence let in by both sides has come to the conclusion that the landlord/petitioner is entitled to the relief as prayed for in the petition and accordingly allowed the petition ordering eviction against the tenant giving four months time to vacate and hand over the possession of the petition schedule property to the landlord/petitioner.

2. Aggrieved by the orders of the learned Rent Controller, the tenant preferred R.C.A.No.1 of 2003 before the Appellate Authority

https://hcservices.ecourts.gov.in/hcservices/

(Principal Sub-Juge, Tiruvannamalai) who has also dismissed the appeal confirming the order of the Rent Controller in H.R.C.O.P.No.23/1999 giving three months time for eviction.

3. Aggrieved by the orders of the Rent Control Appellate Authority/ Sub Judge, Tiruvannamalai, the revision has been preferred by the tenant.

4. The learned senior counsel appearing for the revision petitioner would contend that both the Rent Controller as well as the Appellate Authority have erroneously come to the conclusion that the building requires immediate repair on the ground that the building is in a dilapidated condition and that the building is 50 years old.

5. The learned senior counsel would focus the attention of this Court to Ex.C3 report filed by the Engineer appointed as the Commissioner by the Rent Controller to note down the physical features of the said building.

6. The learned Senior Counsel would contend that even in Ex.C3 Engineer/ Commissioner's Report, the said building is said to be in good condition and that only the country wood roof timber are lightly damaged and the building requires any immediate repair or demolition.

7. The learned Senior Counsel would contend that under Section 14 (1) (b) of the Buildings Lease and Rent Control Act, the landlord is entitled to get an order for eviction only if he proves that the condition of the building requires immediate demolition, and the landlord to prove that in case if the building is reconstructed and demolished it will fetch more income than what he is getting now.

8. The learned Senior Counsel would represent that there is absolutely no evidence on record to show that if the building is demolished or reconstructed then it will fetch more income and that the condition of the building requires immediate demolition.

9. Per contra the learned counsel appearing for the respondent/landlord would draw the attention of this Court to an observation made by the Appellate Authority in Paragraph 10 of the judgment of the Appellate Authority wherein it has been observed by the Appellate Authority that the wooden rafters in the said building are in a damaged condition and it has been further observed that the intention of the landlord to put up a new construction in order to augment his income is a malafide one. But the above said observation that the building if renovated will fetch more income is not based on any oral or documentary evidence. Even in the evidence of P.W.1 there is no mention by him to show how much income the building will fetch after renovation. The landlord has not even examined nearby shop owners to show the income their shops are fetching on the date of

https://hcservices.ecourts.gov.in/hcservices/

filing of the petition. Admittedly, so far, the landlord has not demanded more rent or filed any petition for fixation of fair rent to the building. On the other hand, a perusal of Ex.C3, the report of the Engineer, would show that the building is being maintained periodically, and it is in good condition. The walls on all sides are in good condition and white washed. The flooring area is in a good condition. The country tile roof was repaired and improved just before 10 years, and the condition is O.K. The Terrace roof requires some patch works. The country wood roof timbers are slightly damaged. But they used 5"x5" size roof timbers and the span of the shop is 6'9" only. It is O.K. Finally, the building is not in worst condition and also not require any immediate repair or demolition and that it is O.K.

10. An advocate Commissioner was also appointed in this case to note down the present condition of the said building. Ex.C.1 is the Advocate Commissioners report. It also reports that the portion shown and marked as (A) in Ex.C2 plan is a Madras Terraced building. The rafters therein are slightly damaged. The walls on both sides are in good condition. There is some cracks seen in one or two places on the flooring area. The room marked as (B) in Ex.C2 plan is having country tile roof. The four walls to the said roof are also in a good condition. The wall is made of brick and lime mortar and the walls seems to be painted four years back. There was no damage seen on the rafters in room (B). The roof is in a good condition and according to the Engineer's estimate, the age of the building would be 70 years. In Ex.C.3 the Engineer has stated that the approximate age of the building would be 51 years.

11. For the purpose of getting possession for demolition and reconstruction, the landlord must prove that the condition of the building is so bad requiring immediate demolition. But from Ex.C1 and C3, reports of the Commissioner, it cannot be inferred that the condition of the building requires immediate demolition and reconstruction, As I have already indicated earlier, there is absolute no evidence on record to show that if the building is demolished and reconstructed, it will fetch more income.

12. Under such circumstances, this Court has necessarily interfere with the orders of the learned Appellate authority in R.C.A.No.1/2003, who has confirmed the orders of the learned rent Controller in H.R.C.O.P.No.23/1999.

13. The learned counsel appearing for the respondent relying on 2002-1-L.W.796 Manickkampillai Versus 1.A.Sakuntala 2.Selvi 3.Janaki 4.Uma 5.Vijayalakshmi and contended that if a tenant is able to prove that the building in occupation of the tenant is more than 30 years of age and on modification it will fetch more income than it will be a ground for order eviction. But in the dictum relied on by the

https://hcservices.ecourts.gov.in/hcservices/

learned counsel for the respondent, the application was filed by the landlord under Section 10(2) (i) and 14(1) of the Tamil Nadu Buildings Lease and Rent Control Act wherein it has been held that failure to state the period of default cannot result in rejecting the petition. It was proved by the landlord in that case the tenant had committed willful default in paying the rent for more than 15 months and it has been held that the conduct of the tenant will amount to indifference and there was also evidence let in by the landlord to show that if the land is renovated and let in, it will definitely fetch higher rent and hence the landlord had filed the petition for eviction only under Section 14 (1) (b) of the Tamil Nadu Buildings Lease and Rent Control Act for eviction on the ground that he requires the building for demolition and reconstruction on the ground that the building is in dilapidated condition. So the dictum relied on by the learned counsel appearing for the respondent will not be applicable to the present facts of the case. The ratio laid down in 1997 (1) L.W.364 Ammal Pillai and others V. M/s. Varadarajulu Complex etc., relied on by the learned counsel for the respondent will also be not applicable to the present facts of the case because in that case the tenant has denied the very title of the landlord in respect of the super structure. Since the tenant has denied the title of the landlord it has been held in the said dictum that eviction can be granted on the ground of denial of title alone under Section 14 (1) (b) of the Tamil Nadu Buildings Lease and Rent Control Act. But that is not the case herein. The tenant always admits the ownership of the landlord in respect of the said building. The case in 2000 (IV) CTC 585 Syed Mehadi Ispaphani V. Shakeel Ur-Rehman respondent also will not be applicable to the present facts of the case because in the said case, the commissioner/Engineer had filed a report stating that the age of the building is 50 years old and the condition of the building is so bad requiring immediate demolition and reconstruction. But both the commissioners report Ex.C2 and C3 herein clearly would show that the condition of the building is good and does not require immediate demolition and reconstruction. Only on the basis of surmise, and conjecture that in case the building is demolished and reconstructed, it will fetch more income, the learned Appellate Authority has ordered eviction of the tenant. No doubt as per Ex.C2 and C3, some of the rafters in the building require repair. The learned Senior Counsel appearing for the revision petitioner agrees that if an undertaking is given by the landlord that if he completes the required repair work within three months from the date of receipt of handing over of the possession by the tenant and deliver the property to him, the revision petitioner is prepared to vacate and hand over the possession to the landlord. Even though, the learned counsel appearing for the respondent is present before this court, the respondent/landlord is not present today in the Court to make an endorsement to that effect.

14. Under such circumstances, this Court is of the view that the

https://hcservices.ecourts.gov.in/hcservices/

findings of the learned Appellate Authority in R.C.A.No.1/2003 on the file of Principal Sub Judge, Tiruvannamalai, is liable to be set aside and accordingly it is set aside dismissing the H.R.C.O.P.No.23 of 1999 and the CRP is allowed. If the landlord gives an undertaking to get the building repaired within three months from the date of handing over of the possession by the tenant, the tenant shall vacate and hand over possession to the landlord. After completing the repair work, the landlord shall deliver the property to the tenant/ revision petitioner. No costs.

akv

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

1. The Principal Subordinate Judge,
(Rent Control Appellate Authority)
Tiruvannamalai.

2. The Principal District Munsif
(Rent Controller), Tiruvannamalai.

3. The Section Officer,
VR Section, High Court, Madras.

ONE CC TO MS. AL. GANDHIMATHI, ADVOCATE SR NO 65157

ONE CC TO MR.R. KARTHIKEYAN, ADVOCATE SR NO 64942

C.R.P. (NPD) No.75 of 2006

22.12.2006

JRG(CO)

BP/25.1

https://hcservices.ecourts.gov.in/hcservices/